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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,404	02/12/2002	Rudolf Garwer	22750/525	7026

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/074,404	Applicant(s) GARTNER ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/02, 05/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed June 21, 2004, has been entered. The specification and claims 11 and 21-28 have been amended as requested. New claims 30-33 have been added.

Thus, the pending claims are 1-33, with claims 1-10 are withdrawn as non-elected.

2. Applicant's amendment is sufficient to withdraw the 11, 2nd rejection of claims 11-29, as set forth in section 6 of the last Office Action. Additionally, applicant's arguments are sufficient to withdraw the 112, 2nd rejection of claims 14-17 as set forth in sections 7 and 8 of the last Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-29 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11-29 stand rejected as indefinite for the lack of a structural relationship of the two fiber types (i.e., different titers) as set forth in section 5 of the last Office Action. It is still unclear if the fibers are blended in a single layer, if separate layers contain fibers of each titer range, or if the different fibers are arranged in different adjacent sections of a single layer. New claims 30-33 are similarly rejected.

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5. Claims 21-24, 26, and 27 stand indefinite as set forth in section 9 of the last Office Action. Specifically, the phrase “a 5% modulus value in the machine direction of [x] N/5 cm, but at least [y] Nm²/g” is unclear. Applicant has amended the units of N/gm² to Nm²/g and asserts this renders the claim definite. The examiner respectfully disagrees. The recitation of a modulus of “[x] N/5 cm, but at least [y] Nm²/g” is indefinite because it claims a first value, then states “but at least” another values, wherein the two values have *different units*. New claims 30 and 31 are similarly rejected. Additionally, it is noted that claims 30 and 31 employ the original units of N/gm², rather than the amended units of Nm²/g.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 11-29 stand rejected under 35 USC 112, 1st paragraph as set forth in section 11 of the last Office Action. Additionally, new claims 30-33 are similarly rejected.

Applicant traverses the rejection by asserting that the examiner has not met the burden of establishing the claims are non-enabled without undue experimentation. Applicant has amended claim 11 to recite a method of making a spunbonded nonwoven comprising the steps of

- (i) at least one of (a) bonding fibers having a titer of 6-15 dtex in a portion of the spunbonded nonwoven by needling and (b) bonding fibers having a titer of 1-5 dtex in another portion of the spunbonded nonwoven by using water jets and/or needling, and
- (ii) stretching the bonded fibers by up to 30% in the longitudinal direction, and then
- (iii) drying and thermosetting.

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On this issue, the specification teaches the following:

- (a) "...synthetic fibers or filaments interwoven in three-dimensional structure including only fibers or filaments having a titer of 1 to 15 dtex..." (Specification, page 2, lines 30-31.)
- (b) "The method according to the invention for manufacturing a tufted backing of thermoplastic polymer fibers or filaments processed into a spunbonded nonwoven is characterized in that the fibers or filaments having a titer of 6 to 15 dtex are bonded by needling and the fibers or filaments having a titer of 1 to 5 dtex are bonded by using water jets or by a combination of these methods, and before drying and thermosetting, they are stretched by up to 30% in the longitudinal direction, the mobility of the fibers optionally being improved by the addition of oil or some other finish." (Specification, page 3, lines 23-30.) [Note this is equivalent language to original claim 11.]
- (c) The working example teaches a starting material of spunbond PET nonwoven having filaments of 4.3 dtex. Said nonwoven is then "prebonded" by needling, hydroentangled (water jet bonded), stretched, heat set, and finished. (Specification, page 4, line 22-page 5, line 1.)

Thus, the specification does not teach explicitly or even slightly suggest how to make the invention as claimed (i.e., bonding fibers of a *first* titer in a *portion* of a spunbond nonwoven by needling and bonding fibers of a *second* titer in a *second portion* with water jets and/or needling). Specifically, the specification does not explain how the two different fibers types are structurally related in the nonwoven. Additionally, the specification does not disclose two portions and how said portions are structurally related in the spunbond nonwoven. [Note the 112, 1st new matter rejection set forth below.] The working example does not even employ

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fibers of two titer ranges and the abstract only mentions one range. Therefore, the claims are not enabled since one skilled in the art would not be able to make the invention as claimed without undue experimentation.

8. Claims 11-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not provide support for the claim recitation "of at least one" in line 3 of claim 11. Additionally, the specification does not provide support for the claimed "portions" of the spunbond nonwoven having different titers. Thus, said claims are rejected as containing new matter.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

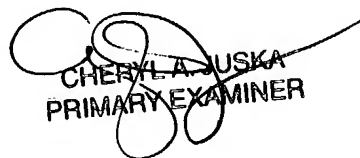
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
September 16, 2004